

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4475 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

VIJAYKUMAR JUGALKISHORE PANDE

Versus

COLLECTOR VALSAD

Appearance:

MRS KETTY A MEHTA for Petitioner

Mr K G Sheth, AGP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 11/08/2000

ORAL JUDGEMENT

The petitioner abovenamed, has filed this petition for appropriate writ, order or direction for quashing and setting aside the order dated 29.4.1991/1.5.1991 passed by the Special Secretary, Revenue Department (Appeals), Gujarat State, Ahmedabad in

Revision Application No.5/90 at Annexure 'P' to the petition and to prevent the respondents from implementing order dated 27.8.1990 placed at Annexure 'K' to the petition. The petitioner has further prayed for an order directing the respondents to continue the grant of the land in favour of the petitioner and not to resume the said land to the Government. The facts of the case of the petitioner may be briefly stated as follows:

2. That the petitioner is an educated unemployed person and since he was not employed anywhere for number of years after obtaining his degree, he thought of starting small business and therefore, he applied for small piece of land belonging to the Government admeasuring 42 sq. metres for starting a Hotel and Provisions Stores on the Sanjan-Bhilad Road. An application was submitted by the petitioner in this respect dated 25.6.1984. Another application dated 28.3.1985 requesting the Collector, Valsad for the grant of the said land for the purpose of starting business of hotel and provision stores was also made. The Collector, Valsad, by his order dated 17.2.1986 granted the land at Regular survey no.60, City S.No.1 Paiky of Sanjan admeasuring 42 sq. metres and the price was fixed at Rs.420/- plus 0.04 paise as special revenue to be paid by the petitioner. Copy of the said order has been placed at Annexure 'A' to the petition. The petitioner claims that after the allotment of the said land, the petitioner took possession thereof and thereafter raised some sort of building for starting the aforesaid business of hotel and provision stores. That even contract for construction of a shed was also given by him. That necessary utensils and furniture articles were purchased by him. The petitioner also applied to Sanjan Gram Panchayat for the purpose of putting up temporary sheds on 15.1.1988. That though the petitioner started business at the aforesaid place, the business was not run profitably on account of the fact that the situation was such that the customers would not come to the hotel and, therefore, it was not being run profitably. That therefore, the petitioner applied for change of user of the said land since the aforesaid business was not being run profitably. It seems that the said change of user was not permitted. Thereafter, on 10.5.1990, the Collector issued notice to the petitioner to show cause as to why the land should not be forfeited on the ground that the petitioner never started business of hotel and provision stores for more than two years after the grant of land as per the terms and condition of the orders as the State Government was authorised to resume the land. The petitioner sent reply to the said show cause notice

on 5.4.1990. There, the petitioner made it clear that he had made construction and the business has been started but it was not being run profitably. However, the Collector did not agree with the said submission of the petitioner and directed that since the petitioner had not started business of hotel and provision stores as per the terms and conditions, and therefore the land should be resumed to the Government. This order was passed on 21/27.8.1990 which is annexed as Annexure 'K'.

3. Feeling aggrieved by the said order of the Collector, the petitioner preferred Revision Application No.5/90 before the Special Secretary, Revenue Department (appeals), Ahmedabad. There also the petitioner raised those points but failed to satisfy the authority and, therefore, the revision application came to be dismissed on 1.5.1991. Being dissatisfied by the aforesaid judgment and order of the Government, the petitioner has preferred this petition before this Court. It has been mainly contended here that the present petitioner had made all possible efforts and yet the business could not be run profitably. That therefore, it cannot be said that the petitioner had not started business of hotel and provisions store. That therefore, there was no violation of terms and conditions of the grant. That these aspects have not been appreciated by the aforesaid two authorities and, therefore, the orders are illegal and the petitioner therefore challenges the aforesaid order and has prayed for quashing and setting aside the aforesaid orders of the respondent. The petitioner has also prayed that the respondents be prevented from enforcing the impugned orders.

4. At the admission stage, rule was issued on 22.7.1991 and ad-interim relief was also granted against dispossession of the petitioner from the aforesaid land. The aforesaid relief has been continued and it is in force as on today. Learned Advocate for the petitioner has also made a statement at the bar that the petitioner is in possession of the said land as on today.

5. Learned AGP, Mr K G Sheth appears for the State. I have heard Ms. Ketty A Mehta for the petitioner and Mr K G Sheth for the State and have perused the papers. It is very clear that the petitioner had stated in affidavit before the authorities that after the allotment of land, the petitioner had made efforts to start business and all necessary steps have been taken by him for starting business of hotel and provision stores on the said land. The petitioner has stated in the petition which is supported by affidavit that a shed was constructed on the

said land for running the said business. He had also purchased utensils and other furniture articles for the purpose of putting some benches and tables to start the business. That the petitioner also made applications to Sanjan Gram Panchayat for the purpose of putting a shed on 15.1.1988 and accordingly such permission was obtained from the Panchayat as per Resolution passed by the General Body of the Panchayat on 30.1.1988. Copy of the said Resolution is placed at Annexure 'B'. The petitioner also applied for permission to raise construction on the said land and the permission was granted to the petitioner by the Panchayat as per the document at Annexure 'C'. That the petitioner had entrusted the work to a contractor for construction of the shed on the said land and accordingly the construction was made and the petitioner has spent lot of money for the said construction. The petitioner has submitted bills of the contractor for the construction of the shed for hotel and provision stores dated 7.2.1988. The petitioner has also produced the bill of furniture etc. which is produced at Annexure 'D' to the petition. Even the completion certificate has been applied for by the petitioner on 17.2.1988 which was granted by the Panchayat to the petitioner. This shows that the building was constructed and even the completion certificate was issued by the Panchayat in this respect. The petitioner has claimed that the petitioner has purchased materials for provision stores from one Jafarbai Hasanbai & Sons in February, 1988 for starting business of provision stores on the land in dispute. The petitioner submitted copies of bills to show such purchases at Annexure 'D-1'. It has also come out that since the aforesaid plot of land is situated away from the village and away from residential areas, the business was not being run profitably and, therefore, the petitioner applied for change of user and submitted application to the Collector to permit him to change user and also for permission to use the said land for starting new business of making plastic items.

6. The point is whether the aforesaid facts show that the petitioner had started business within the time limit fixed in the order of allotment. There is no dispute that the land was allotted on condition to start business of hotel and provision store within two years. The said grant is placed at Annexure 'A' which is dated 17.2.1986 and then there is evidence to show that the petitioner had completed the requirements for starting business. The documents on record show that the petitioner made an application for permission to construct a shed. The said documents also show that he

really had constructed the shed. There is also evidence to show that he had obtained completion certificate showing that the construction work was over, that he had purchased utensils, furniture etc. for the aforesaid business. These documents collectively show that the petitioner did start the business of hotel and provision stores within two years from the date of grant. Even the photograph at page 55 shows that the provision stores was being run by the petitioner and the adjoining shop was the hotel being run by him. The petitioner has submitted affidavit of the photographer at page 56 to show that the aforesaid photograph was taken on 4.7.1991 and the hotel and provision stores were being run in the said building by the petitioner and the photograph has been taken by him in respect of the said business of the petitioner. This shows that there is overwhelming evidence on record proving that the petitioner was doing business of hotel and provision stores. Therefore, it cannot be said that the petitioner did not act in accordance with the terms and conditions contained in the grant at Annexure 'A'. It may be true that the business might not have been run profitably but it does not mean that the said business was not being run or has not been commenced at all.

7. The two authorities have taken decision that the aforesaid business has not been started at all by the petitioner. It is not clear as to the basis on which the aforesaid finding has been arrived at by the said two authorities. In the judgment, the Government interprets that if the petitioner felt anything wrong, he should have applied for exemption from the aforesaid terms and conditions. That has not been done by the petitioner. This is not very true. The petitioner had applied to the appropriate authorities but the application may not be for exemption but the application has been made for the change of user but there was nothing on record to show that the petitioner did not use the said land for the provision stores and hotel. The respondents have not disputed the photograph annexed to the petition. It is also not the case of the respondents that the above photographs relate to some another building on the land in question. In fact, the respondents have not filed any affidavit to repudiate the claim of the petitioner.

8. In the aforesaid view of the matter, there is evidence to prove that the petitioner has started the hotel and provision stores. But if the business was not being run profitably, it cannot be said that the petitioner has committed violation of terms and conditions of the orders of grant and consequently it is apparent that the respondents and their authorities have

not considered the aforesaid aspects of the case properly. In these facts and circumstances of the case, orders of the aforesaid two authorities are held to be illegal on the face of it and they are required to be quashed and set aside. The petition is, therefore, allowed and the orders passed by the respondents at Annexures 'P' & 'K' are quashed and set aside. The respondents are prevented from implementing and enforcing the orders at Annexure 'P' and 'K'. Rule is made absolute accordingly. No order as to costs.

11.8.2000 [D P Buch, J.]

msp.